

**§ 83.11 Independent review, reconsideration and final action.**

(a)(1) Upon publication of the Assistant Secretary's determination in the FEDERAL REGISTER, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals. Petitioners which choose under § 83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner's or interested party's request for reconsideration must be received by the Board no later than 90 days after the date of publication of the Assistant Secretary's determination in the FEDERAL REGISTER. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 days after publication of the final determination in the FEDERAL REGISTER.

(b) The petitioner's or interested party's request for reconsideration shall contain a detailed statement of the grounds for the request, and shall include any new evidence to be considered.

(1) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(2) The party or parties requesting the reconsideration shall mail copies of the request to the petitioner and all other interested parties.

(c)(1) The Board shall dismiss a request for reconsideration that is not filed by the deadline specified in paragraph (a) of this section.

(2) If a petitioner's or interested party's request for reconsideration is filed on time, the Board shall determine, within 120 days after publication of the Assistant Secretary's final determination in the FEDERAL REGISTER, whether the request alleges any of the grounds in paragraph (d) of this section and shall notify the petitioner and interested parties of this determination.

(d) The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

(1) That there is new evidence that could affect the determination; or

(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or

(3) That petitioner's or the Bureau's research appears inadequate or incomplete in some material respect; or

(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7 (a) through (g).

(e) The Board shall have administrative authority to review determinations of the Assistant Secretary made pursuant to § 83.10(m) to the extent authorized by this section.

(1) The regulations at 43 CFR 4.310-4.318 and 4.331-4.340 shall apply to proceedings before the Board except when they are inconsistent with these regulations.

(2) The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.

(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties. The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the final determination or, pursuant to paragraph (e)(8) of this section, the record used for the determination.

(4) Pursuant to 43 CFR 4.337(a), the Board may require, at its discretion, a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the Board determines that further inquiry is necessary to resolve a genuine issue of material fact or to otherwise augment the record before it concerning the grounds for reconsideration.

(5) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties pursuant to paragraph (b)(1) of this section shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(6) An appellant's reply to an opposing party's answer brief, provided for in 43 CFR 4.311(b), shall not apply to proceedings under this section, except that a petitioner shall have the opportunity to reply to an answer brief filed by any party that opposes a petitioner's request for reconsideration.

(7) The opportunity for reconsideration of a Board decision provided for in 43 CFR 4.315 shall not apply to proceedings under this section.

(8) For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access.

(9) The Board shall affirm the Assistant Secretary's determination if the Board finds that the petitioner or interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraphs (d)(1)—(d)(4) of this section.

(10) The Board shall vacate the Assistant Secretary's determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraphs (d)(1)—(d)(4) of this section.

(f)(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1)—(d)(4) of this section alleged by a petitioner's or interested party's request for reconsideration.

(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

(3) The Secretary, in reviewing the Assistant Secretary's decision, may review any information available, whether formally part of the record or not. Where the Secretary's review relies upon information that is not formally part of the record, the Secretary shall insert the information relied upon into the record, together with an identification of its source and nature.

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph (f)(2), the petitioner and interested parties shall have 30 days from receiving notice of the Board's decision to submit comments to the Secretary. Where materials are submitted to the Secretary opposing a petitioner's request for reconsideration, the interested party shall provide copies to the petitioner and the petitioner shall have 15 days from their receipt of the information to file a response with the Secretary.

(5) The Secretary shall make a determination whether to request a reconsideration of the Assistant Secretary's determination within 60 days of receipt of all comments and shall notify all parties of the decision.

(g)(1) The Assistant Secretary shall issue a reconsidered determination within 120 days of receipt of the Board's decision to remand a determination or the Secretary's request for reconsideration.

(2) The Assistant Secretary's reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request. The Assistant Secretary's reconsideration may address any issues and evidence consistent with the Board's decision or the Secretary's request.

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## § 83.13

(h)(1) If the Board finds that no petitioner's or interested party's request for reconsideration is timely, the Assistant Secretary's determination shall become effective and final for the Department 120 days from the publication of the final determination in the FEDERAL REGISTER.

(2) If the Secretary declines to request reconsideration under paragraph (f)(2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.

(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the FEDERAL REGISTER.

### § 83.12 Implementation of decisions.

(a) Upon final determination that the petitioner exists as an Indian tribe, it shall be considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes. The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally acknowledged tribes.

(b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioners documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of § 83.7(e) and maintaining significant social and political ties with the tribe

(i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

### § 83.13 Information collection.

(a) The collections of information contained in § 83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0104. The information will be used to establish historical existence as a tribe, verify family relationships and the group's claim that its members are Indian and descend from a historical tribe or tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments